

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

INTELLECT WIRELESS, INC.,)	
)	
Plaintiff,)	Civil Action No. 08-C-1215
)	
v.)	Honorable Joan B. Gottschall
)	Magistrate Judge Susan E. Cox
)	
T-MOBILE USA, INC., UNITED)	
STATES CELLULAR CORP.,)	
VIRGIN MOBILE USA, INC., HELIO,)	JURY DEMAND
INC.)	
)	
Defendants.)	

**PLAINTIFF'S RESPONSE TO
UNITED STATES CELLULAR CORPORATION'S COUNTERCLAIMS**

Plaintiff Intellect Wireless, Inc. ("Intellect Wireless") hereby responds to United States Cellular Corporation's ("US Cellular") Counterclaims, served on March 24, 2008, as follows:

Parties

1. US Cellular is a corporation organized under the laws of the State of Delaware with its principal place of business at 8410 W. Bryn Mawr Avenue, Chicago, Illinois 60631.

Response:

Admitted.

2. On information and belief, Intellect Wireless is a Texas corporation and has a principal place of business in Fort Worth, Texas.

Response:

Admitted that Intellect Wireless is a Texas corporation with an office in Fort Worth, Texas, but otherwise denied.

Jurisdiction

3. The counterclaims include claims for declaratory judgment of patent non-infringement and patent invalidity, arising under the patent laws of the United States, 35 U.S.C. § 100, *et seq.* and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202. Thus, this Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

Response:

Admitted that US Cellular purports to plead such claims and this Court has jurisdiction, but otherwise denied.

First Count – Declaratory Judgment of Non-Infringement

4. Intellect Wireless has charged US Cellular with infringement of the ‘210, ‘076, and ‘186 patents by filing a complaint against US Cellular.

Response:

Admitted.

5. US Cellular has not been and is not now infringing, contributorily infringing, or inducing infringement of any claim of the ‘210, ‘076, and ‘186 patents. In light of Intellect Wireless’ complaint, there exists an actual controversy between Intellect Wireless and US Cellular regarding these patents.

Response:

Admitted that there is an actual controversy due to US Cellular's infringement, but otherwise denied.

6. Accordingly, a valid and justiciable controversy has arisen and exists between Intellect Wireless and US Cellular. Pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201 *et seq.*, US Cellular requests a judicial determination and declaration of non-infringement of the '210, '076, and '186 patents.

Response:

Admitted that there is a valid and justiciable controversy due to US Cellular's infringement, but otherwise denied.

Second Count – Declaratory Judgment of Invalidity

7. Intellect Wireless has charged US Cellular with infringement of the '210, '076, and '186 patents by filing a complaint against US Cellular.

Response:

Admitted.

8. US Cellular contends that the claims of the '210, '076, '186 patents are invalid for failure to comply with the conditions of patentability, including but not limited to 35 U.S.C. §§ 101, 102, 103, and 112. Based on the filing of this suit, US Cellular believes that Intellect Wireless contends that the claims of the '210, '076, and '186 patents are valid and enforceable.

Response:

Admitted that the claims of the '210, '076, and '186 patents are valid and

enforceable and that US Cellular purports to plead invalidity, but otherwise denied.

9. Accordingly, a valid and justiciable controversy has risen and exists between Intellect Wireless and US Cellular. Pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201 et seq., US Cellular requests a judicial determination and declaration that each of the claims of the '210, '076, and '186 are invalid for failure to comply with the conditions of patentability, including, but not limited to 35 U.S.C. §§ 101, 102, 103, and 112.

Response:

Admitted that there is a valid and justiciable controversy, but otherwise denied.

Third Count – Declaratory Judgment of Unenforceability

10. On information and belief, Intellect Wireless and/or its predecessors in interest were aware of the alleged infringement for many years but unreasonably delayed filing this litigation to the material prejudice of US Cellular and is now barred from recovery.

Response:

Denied.

11. US Cellular is therefore entitled to a declaratory judgment that the '210, '076, and '186 patents are unenforceable under the doctrine of laches.

Response:

Denied.

Respectfully submitted,

/s/ David J. Mahalek

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***Attorneys for Plaintiff,
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing **PLAINTIFF'S RESPONSE TO UNITED STATES CELLULAR CORPORATION'S COUNTERCLAIMS** was electronically filed with the Clerk of Court using CM/ECF system, which will send notification of such filing to the following e-mail addresses on April 9, 2008 by:

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